

REMARKS

Claims 1-13, 15-16 and 18 remain in the case, claims 14 and 17 being canceled by the foregoing amendment. Concurrently, the Applicant submits herewith a replacement set of formal drawings accompanied by his request that the Official Draftsman substitute same in stead and in place of the informal drawings originally filed. The Applicant expresses his regret over the quality of the initial drawings and has carefully scrutinized each detail to insure that no new matter appears in the drawings now submitted.

Claims 1-2, 4, 6-8, 10, and 13-15 were rejected under 35 USC 102(b) as fully anticipated by the teachings in US patent 6,481,019 issued to Diaz et al. While couched in the arguments of full anticipation, the Examiner, nonetheless, indicates that in each of the Applicant's independent claims, namely claims 1, 7 and 13, and also in some of the dependent claims, like in claim 8, while there is no full anticipation of the recited structure such structure is trivial and therefore stands as an obvious design expedient. Accordingly, the Applicant traverses this rejection both on the substantive bases applicable to 35 USC 102(b) and also those applicable to 35 USC 103(a).

The Applicant, in the background text of his application, has discussed at length the limitations of an event that would lead to the use of the inventive respiration hood. A potential event of this nature, while intended to spread wide chaos and disorder, must be cast to appear as an act of terror effected by some fringe group and not by an organized and well advanced government. Such an event, therefore, cannot (or should not) display the full organizational complement of scientific skills that would be able to produce an

highly technical weapon since only a crude and primitive mechanism will satisfy the requirements of limiting a properly focused retaliatory response. It is such an event, and the failure of the infrastructure that follows, that is addressed in the present invention.

The notions that some governments ruled by a despot can rise to the distributed technical expertise for an advanced mass destruction device are similarly self-contradicting, as shown by recent events. For example, the Examiner is invited to take official notice of the huge cannon that Saddam Hussein was having built in the late '80s and early '90s. To those unfamiliar with scientific principles development of such a huge cannon looked like a dangerous event. Those that were schooled in the sciences, however, knew that the muzzle or exit velocity is limited to the speed of sound at the end pressures of the explosive charge and those sound wavefront velocities are not even close to the speeds necessary for the ranges suggested. Nonetheless, all sorts of hysteria followed and all kinds of movies were made about this 'horrible' Saddam cannon even though no huge cannons were ever made to launch anything into orbit and cannons are wholly absent from launch sites like the Vandenberg Air Force base or even Cape Canaveral.

Those that were schooled in the sciences, however, reached a different set of conclusions on these same facts. They, instead, concluded that brilliant, and very brave, Iraqi scientists that were obviously not loyal to Saddam paraded this scientific hoax right in front of his nose. Moreover, those same bravely disloyal scientists then continued the hoax parade all the way into Great Britain where the barrel segments for this monster

cannon were to be made or machined. Of course, that part of the parade was intended to tell the world “don’t worry, we got this idiot handled” but the mass hysteria persists nonetheless.

From this scientific vantage it is the mass hysteria that will invariably follow that presents the biggest threat, accompanied by a sense of helplessness in the affected public. It is exactly this problem that is addressed in the invention by allowing those affected to use self help, utilizing common things like tissue paper and plastic garbage bags as replacement filters and shrouds. Of course, the releasable engagement of these common replacement articles is at the heart of this invention and the Examiner, himself, has concluded that it is not found in the prior art.

The Applicant is mindful that the obviousness standard is currently being re-visited by our Supreme Court in *KSR International Co. v. Teleflex, Inc.* This prospective further guidance, however, is not here as yet and we are therefore still guided by the prior guidance from the Supreme Court in *Dickinson v. Zurko*, 527 U.S. 150, 119S.Ct. 1816, 50 USPQ2d 1930 (1999), where a standard of review of these proceedings should follow the example set by the Administrative Procedure Act [APA] **which requires a reversal if the ruling is not supported by substantial evidence**, 5 USC 706(2)(E). Supported on the pillars in *Zurko* the Federal Circuit in *In Re Gartside*, 203 F.3d 1305, 53 USPQ2d 1769 (Fed.Cir., 2000) then imposed the substantial evidence test to findings of obviousness, reiterating its earlier reasoning in *In Re Dembiczak*, 175 F.3d 994, 50 USPQ2d 1614 (fed.Cir., 1999). Accordingly the *Dembiczak* rule is now imprinted with

the Supreme Court mandate and **an express factual reference must exist in the record pointing to the suggestion of the combination of references in the prior art that is cited for the conclusion of obviousness.** We therefore quote at length from *Dembiczak*.

“Our case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references. [Citations] ... Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor’s disclosure as a blueprint for piecing together the prior art to defeat patentability—the essence of hindsight. [Citations] ...”

Dembiczak then further states:

“In addition to demonstrating the propriety of an obviousness analysis, particular factual findings regarding the suggestion, teaching, or motivation to combine serve a number of important purposes, including: (1) clear exposition of the position taken by the Examiner ... “

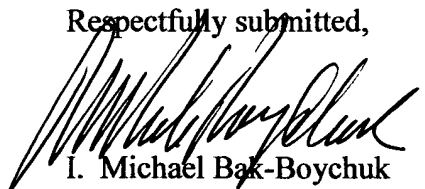
175 F.3d at 998, 50 USPQ2d at 1616-1617, emphasis added

Until modified, some suggestion of the totally different function and process needs to exist in the art cited to conform with this requirement.

On all the foregoing bases it is respectfully submitted that all reasons for rejection have now been removed and an early notice of allowance is earnestly solicited.

Respectfully submitted,

Date: March 9, 2007



I. Michael Bak-Boychuk
U.S.P.T.O. Reg. No. 26,362
P.O. Box 32501
Long Beach, CA 90832
Tel. (562) 432-8419
Fax. (562) 983-8001**